

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BRIAN HUDDLESTON, §
§
Plaintiff, § CIVIL ACTION No. 4:20CV447
v. §
§
FEDERAL BUREAU OF §
INVESTIGATION and UNITED § JUDGE AMOS MAZZANT
STATES DEPARTMENT OF JUSTICE, §
§
Defendants. §

DEFENDANTS' MOTION TO STAY SCHEDULING ORDER DEADLINES

Defendants Federal Bureau of Investigation (“FBI”) and United States Department of Justice (“DOJ”) file this Motion to Stay Scheduling Order Deadlines for three months, pending completion of the processing of the subject Freedom of Information Act (“FOIA”) requests.

I. INTRODUCTION

This is a FOIA lawsuit filed by Plaintiff Brian Huddleston against Defendants FBI and DOJ, arising out of three separate FOIA requests dated April 9, 2020, June 1, 2020, and June 5, 2020. [Doc. 3, Exhibits 1-3]. On October 22, 2020, this Court cancelled the scheduled Case Management Conference and *sua sponte* entered a Scheduling Order setting the following deadlines:

December 28, 2020	Deadline for Defendants' Complete Production of Documents and <i>Vaughn</i> Index
January 28, 2021	Defendants' Motion for Summary Judgment

March 1, 2021	Plaintiff's Opposition and Cross-Motion for Summary Judgment
March 15, 2021	Defendants' Reply and Opposition
March 29, 2021	Plaintiff's Reply

[Doc. 9].

Defendants request a stay of the Scheduling Order deadlines for a period of three months for the reasons set forth below.

II. STATUS OF REQUESTS

A. FBI Requests

There are two pending requests being processed by the FBI, dated April 9, 2020 and June 1, 2020. [Doc. 3, Exhibits 1&2]. FBI has completed the initial search identifying approximately 50 cross-reference serials, with attachments totaling over 20,000 pages, in which Seth Rich is mentioned. FBI has also located leads that indicate additional potential records that require further searching. At this time, FBI anticipates that the volume of responsive records contained within the volume of materials located by FBI's initial keyword search will be much smaller than 20,000 pages. However, the issue right now with this batch of documents is the amount of labor required to ingest all of the material so that the responsive records will, first, be in a page format, secondly, can be identified from among the thousands of non-responsive records, and finally, be processed.

FBI is also currently working on getting the files from Seth Rich's personal laptop into a format to be reviewed. There are thousands of files of many types. The goal right

now is to describe, generally, the types of files/personal information contained in this computer. Furthermore, the FBI will continue to evaluate the responsiveness of these files under the FOIA.

In summary, FBI has made significant progress in the search, but there is still much work that lies ahead, including (1) processing the approximately 50 cross-references (with thousands of pages to ingest and sort through), (2) undertaking some level of review of the personal laptop, and (3) completing all remaining searches. Unfortunately, these efforts are hampered by FBI FOIA office's reduction to a 50% staffing posture due to Covid. [Exhibit A: Declaration of Michael G. Seidel].

B. DOJ OIP¹ Request

There is one pending request being processed by DOJ OIP, dated June 5, 2020. [Doc. 3, Exhibit 3]. OIP's initial keyword search similarly located tens of thousands of pages, and OIP is continuing to review these results in order to identify responsive records and to remove duplicative materials. OIP still needs to complete this review, process any potentially responsive records, and engage in consultation. Given the law enforcement sensitivities that will naturally be involved and, because the request seeks documents from the Special Counsel's Office, OIP anticipates that this case will require a complex consultation process. OIP's average processing time for complex requests, according to the most recent Annual FOIA Report, is about 10 months. Additionally, OIP has other FOIA litigation matters that it is simultaneously working on.

¹ The Office of Information Policy ("OIP") is responsible for processing FOIA requests seeking certain records within the Special Counsel's Office.

III. ARGUMENT & AUTHORITIES

The authority to stay a case stems from “the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6, 118 S.Ct. 1761, 140 L.Ed.2d 1070 (1998). In deciding whether to exercise that power, courts must “weigh competing interests and maintain an even balance between the court’s interest in judicial economy and any possible hardship to the parties.” *Belize Soc. Dev. Ltd. v. Gov’t of Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). The FOIA does not alter this analysis; indeed, “[t]he FOIA imposes no limits on courts’ equitable powers in enforcing its terms.” *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (citing *Renegotiation Bd. v. BannerCraft Clothing Co.*, 415 U.S. 1, 19–20, 94 S.Ct. 1028, 39 L.Ed.2d 123 (1974)).

In light of the status of the searches and the work left to be done, Defendants propose an additional three months to complete the tasks described in Section II, up to and including March 29, 2021. At that time, Defendants will provide the Court with an updated search status and propose a production schedule.

IV. CONCLUSION

Defendants request that this Court grant its Motion to Stay Scheduling Order Deadlines to allow Defendants adequate time to complete the processing of the three pending FOIA requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2020, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ Andrea L. Parker
ANDREA L. PARKER
Assistant United States Attorney

CERTIFICATE OF CONFERENCE

In compliance with Local Rule CV-7(h), undersigned counsel hereby certifies that, I have conferred with plaintiff's counsel and he opposes this motion.

/s/ Andrea L. Parker
ANDREA L. PARKER
Assistant United States Attorney